Table of Authorities Cited

Cases

Statutes and Texts

No. 306

In the Supreme Court of the United States

OCTOBER TERM, 1945

J. R. MASON, PETITIONER

v.

PARADISE IRRIGATION DISTRICT, RESPONDENT

PETITIONER'S REPLY TO BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Now comes petitioner filing this reply to respondent's brief opposing the motion.

Respondent significantly makes no attempt to argue or even to question the following, in the instant petition:

> "In the case at bar, the R.F.C. is obligated to take refunding 4% bonds as provided in the plan, *regardless of the outcome of this proceeding.*" (Emphasis supplied.)

1.

Respondent argues (p. 7) that the Reconstruction Finance Corporation occupies a different status in the instant proceeding; from that which it occupied in the case of *State of Texas v. Tabasco Cons. School District*, 132 F. (2d) 62, 133 F. (2d) 196, 142 F. (2d) 58, because in the *Tabasco* case "the R.F.C. went out on the open market and bought bonds, becoming thereby an ordinary purchaser with no priority or prior rights. It did not act in the *Texas* case as it did in this case, that is as an agency of the government in the furtherance of a public act of the government for the benefit of the public weal."

Respondent has injected an important question, when he argues that the R.F.C. enjoys "priority and prior rights" in the instant proceeding, which distinguishes this case from the *Texas* case, but fails completely to explain the nature or source of the alleged "prior rights".

But, in any event, the injection of the question by respondent, raises a point of law that calls for due consideration.

Either there are no priorities in the claims of the R.F.C. and petitioner, in which event the *Texas* case can not be distinguished, or on the other hand if there be priorities in the instant case, then there is not a single class of creditors, and the consent of the R.F.C. can not affect the claim of petitioner.

Petitioner has been supplied with the transcript of record in this *Texas* case, which fully supports and substantiates the argument contained in the instant

petition, and completely refutes the contention by respondent that the *Texas* case has no bearing.

Exhibit "B", "Acceptance of Plan of Composition of Indebtedness of Tabasco Cons. Ind. School District, La Joya, Texas", signed by Ronald H. Allen, Asst. Secretary, Reconstruction Finance Corporation, on June 12, 1940, recites in part as follows (R. 13):

> "Whereas this Corporation has purchased and now holds bonds aggregating in principal amount $423,500 * * *
>
> Whereas, the total of said bonds and warrants held by this Corporation as purchaser is in an amount exceeding 92% of the bonded indebtedness of said District * * *.
>
> Whereas, said District desires to file a petition * * * under the provisions of Sections 81, 82, 83 * * * in order to effect a plan of composition of its outstanding indebtedness * * *
>
> * * * That such payments will be made from the proceeds of a loan authorized by the R.F.C. and which has been or will be disbursed to or for the benefit of the District for the purpose of reducing and refinancing its indebtedness * * *"

Thus the Acceptance by the R.F.C. in the *Texas* case, and in the instant case (R. 12) establish the R.F.C. status as being identical, and the loans made by the R.F.C. in both situations were under Public No. 78, 73rd Congress, approved June 16, 1933. (43 U.S.C., Sec. 403.)

Respondent does not attempt to substantiate or prove his argument made on page 7 that the R.F.C.

"did not act in the *Texas* case as it did in this case, that is as an agency of the government in the furtherance of a public act of the government for the benefit of the public weal".

Petitioner believes that the only authority delegated to the R.F.C. to interest itself in the fiscal affairs of respondent, or of school districts in Texas, is that contained in Public No. 78, 73rd Congress, approved June 16, 1933. (43 U.S.C., Sec. 403.)

During the trial of the *Tabasco* case, the following proceedings were had:

> "Mr. Crowe. The Reconstruction Finance Corporation whenever they make these loans, they require you to discharge all your debts and they take that amount of the debt that you haven't got cash money to pay, and then they put that into the form of bonds and lend you the money. They will lend you the money and put that in the form of a bond. That is the way they do. They have done that with all the water (irrigation) districts, and everyone that they have refunded, even open accounts, they did the same thing.
>
> * * * * * * *
>
> The Court. I expect there was one time when the State of Texas would have been glad to take 65 per cent.
>
> Mr. Crowe. I expect they would. I think this creditor should be entitled to bonds in substitution for those that we now hold; at least have the 4% to apply to replace the loss to the permanent fund.
>
> The Court. In other words, you don't want cash; you want bonds just like the R.F.C.?
>
> Mr. Crowe. That is correct sir.
>
> * * * * * * *

The Court. Yes. Now your objection is that they are just offering you cash to let the R.F.C. buy your bonds?

Mr. Crowe That is right. They are asking this Court to require us to sell our bonds to the R.F.C. for 65 cents on the dollar.

The Court. You think instead of having the funds they should have the bonds.

* * * * * * *

Mr. Crowe. Yes sir. We think to give them a 4% bond is discretionary; that we should have the same class of security as is allowed the consenting creditor * * *

The Court. Counsel for petitioner, for the purpose of voting here the R.F.C. is entitled to vote 100% of the issues it bought, but so far as the composition agreement is concerned, the R.F.C. simply stands here as a bondholder and now actually holds those bonds.

Mr. Thompson. That is correct.

The Court. The R.F.C. is in the same class as all other bondholders, the same class as the State. The State is in the same class as the R.F.C. Now you propose to issue bonds to the R.F.C. on the basis of 65% of par.

Mr. Thompson. Yes sir.

The Court. You don't propose to issue bonds to the State School Fund? They want the bonds; they don't want the money." (R. 97.)

* * * * * * *

"Mr. Crowe. Why shouldn't we have the same security that the other creditor has? That is, why shouldn't we receive the same treatment? What difference would it make to the petitioner whether we held their bonds or accepted the R.F.C. cash?

> The Court. Counsel, I will tell you what I will permit you to do. I will permit you to amend your plan, if it is satisfactory to the R.F.C., which I am sure it will be. Let him take refunding bonds in lieu of cash * * *"

This testimony, and the judgment of the Court requiring that refunding 4% bonds be given the objecting bondholder upon the same terms and conditions as the R.F.C. (132 F. (2d) 62, 133 F. (2d) 196, 142 F. (2d) 58) present a conflict with the opinions of the Circuit Court of Appeals for the Ninth Circuit in the instant case (R. 215, 216) as well as in the cases cited in brief for respondent, which has not been, but should be, resolved by this Court.

The unconstitutionality of other statutes designed to give 90% or more of the bondholders of a similar district as respondent, the right to deprive minority bondholders of their lawful rights, was announced by the California Court in *Selby v. Oakdale I. D.*, 140 Cal. App. 171, when Stats. 1933, p. 800, was denounced as invalid. It read:

> "Before an action or proceeding by the holders of bonds of an Irrigation District to compel, enforce, *prohibit or restrain* the doing of an act by the district or the Board of Directors thereof may be instituted or maintained, the holders of 10% or more of the duly issued outstanding and unpaid bonds of the district must join in the action or proceeding as plaintiffs, petitioners or applicants for the relief sought." (Emphasis supplied.)

Respondent is a creature of Stats. 1897, p. 254, as amended, which statute, together with the Constitution

of California, is the source of the powers, rights and duties it is invested with. The officers of the District, the R.F.C., and other creditors must look entirely to the State laws for their authority and rights as creditors, and are charged with notice of the limitation of authority vested in the officials of the District. The Congress in approving the amended Chap. IX expressly inhibited any order or decree that would "interfere" (come into collision with) the exercise of "political or governmental powers" of the State, or its political subdivisions to which the State had lawfully delegated its sovereign power of direct *ad valorem* taxation as a base upon which to borrow money. This Court has held squarely that the jurisdiction granted under Chap. IX is carefully limited and restricted, and may be invoked only in cases; and to the extent "authorized by State law".

Faitoute v. Asbury Park, 316 U.S. 502, 508.

There is no provision in any law pursuant to which the bonds owned by petitioner were issued, that authorizes any majority of creditors to "consent" to deprive even the holder of one bond of the vested rights guaranteed him by the Constitution of California, and by Art. I, Sec 10 of the Constitution of the United States.

The contractual relationship between respondent and the R.F.C. is based upon the contract agreed to by the R.F.C. on May 22, 1934. (R. 74.)

Respondent did not even attempt to deny that this contract obligates the R.F.C. to take the refunding 4% bonds for its loan, at 100 and accrued interest, and

"regardless of the outcome of this proceeding"; which makes still more significant the language in the so-called "consent" to the plan by the R.F.C. (R. 12), which alleges not that the R.F.C. "owns" the bonds involved, but "has purchased and now holds bonds aggregating in principal amount * * *"

This Court affirmed the ruling in *Wright v. Coral Gables,* 137 F. (2d) 192, by the Fifth Circuit Court, where the rule was stated:

> "The assents must be made by persons in the same situation as those against whom their votes are counted. They must represent a concession and a yielding by the consenting creditors, equivalent to that demanded by those non-assenting but compelled by the plan to accept."

It is too well settled to need citations that neither consent nor submission by holders of local government bonds can validly authorize any Court to permit tax officials to be relieved or excused from performing the duties imposed on them by law. (*Wulff Hansen Co. v. Silvers,* 21 Cal. (2d) 274.) The duties of respondent were again construed in *Herring v. Modesto,* 95 Fed. 705; *In re Madera I. D.,* 92 Cal. 308; *Fallbrook v. Cowan,* 131 Fed. (2d) 513 (cert. denied), and *Provident v. Zumwalt,* 12 Cal. (2d) 365.

The sole authority of R.F.C. to make the loan involved in the *Texas* case, and the instant case is contained in Section 36 of the Emergency Farm Mortgage Act (43 U.S.C., Sec. 403) which was enacted years before 11 USCA 401-403 which forms the base of the instant proceeding.

The first attempt to require petitioner to accept the price offered by the R.F.C., being the identical "plan" approved by the Court below in the instant proceeding, was not permitted (R. 89), because "the Court is without jurisdiction to entertain the petition for readjustment and settlement of the indebtedness of said Paradise Irrigation District * * *".

For these reasons, the instant proceeding must also fail.

2.

Respondent, in answering the second point, argues that this Court in the *U. S. v. Bekins,* 304 U.S. 27, case reversed and repudiated the long settled principle of constitutional law, reaffirmed in *Huddleson v. Dwyer,* 322 U.S. 232, that the substantive and procedural rights of the holders of the bonds of a State or its political subdivision are governed by State law and decisions.

The *Bekins* case reached this Court on a simple demurrer, and presented no question beyond the one raised by the demurrer. No actual facts were presented and the question of federal versus state domination of the sovereign State power to borrow money in anticipation of the collection of direct *ad valorem* taxes was not passed upon in that case. In the light of the explicit inhibitions in Sec. 83 and the broadened severability clause in Sec. 81 it was held that the amended act is "not unconstitutional", but nothing said in the *Bekins* case modified what was said in the *Ashton* case (298 U.S. 513), as follows:

"Neither consent nor submission by the States can enlarge the powers of Congress * * * The sovereignty of the State essential to its proper functioning under the Federal Constitution cannot be surrendered; it can not be taken away by any form of legislation * * *" "* * * for a very long time this court has steadfastly adhered to the doctrine that the taxing power of Congress does not extend to the States or their political subdivisions. The same basic reasoning which leads to that conclusion, we think, requires like limitation upon the power which springs from the bankruptcy clause."

Again, later this Court said in *Arkansas Corp. v. Thompson*, 312 U.S. 673:

"Manifestly, whether or not taxes are 'legally due and owing' to a state depends upon the valid laws of that state. * * * But, there is nothing in the history of bankruptcy or reorganization legislation to support the theory that Congress intended to set the federal courts up as super-assessment agencies over State taxes."

The argument presented on page 14 of the instant petition is neither questioned nor disputed in respondent's brief, and the subjects of law and economics on this page of the petition reach the heart of the controversy.

The rental value of the taxable land within the boundaries of respondent will not be affected in any way, regardless of whether the decree below is sustained or reversed. The sole effect, in either event will be to affect the amount of the net rent, after taxes

which private interests will be allowed to pocket, as unearned increment and capitalize into higher prices which homeseekers will be compelled to pay when acquiring a title deed. Respondent is not only authorized but obligated to administer any and all land that is or may become tax delinquent more than three years, as a beneficent landlord, and to collect the "rents, issues and profits" arising therefrom for the "uses and purposes" of the Act, one of which "purposes" is the fulfillment of lawful obligations.

Provident v. Zumwalt, supra.

Therefore, "neither the general welfare nor the best interests of the soldiers and sailors now fighting abroad, will be protected by depriving petitioner of the substantive rights in his bonds".

That the rights to the "rents, issues and profits" of land are ruled by State and not by Federal law, was reaffirmed in *Comm. v. Skaggs,* 122 Fed. (2d) 721, and certiorari was denied by this Court. Does not this rule apply with equal vigor, when it is not private interests, but the State itself to which "rents, issues and profits of land" lawfully belong, as in the case at bar?

That the bonds owned by petitioner constitute valid, binding and unpaid general obligations of respondent payable from unlimited and continuing direct taxes upon the value of all privately held land within the District, until paid, with interest, is not disputed.

That respondent has the duty and obligation to administer any and all land more than 3 years tax delinquent as a beneficent landlord and the right to the full rent value of all land within its boundaries, ahead of a county, or any other interest public or private,

or as much thereof as may be needed to meet operation and maintenance costs and debt obligations has been decided by the highest State Court.

Therefore the bonds at bar are in legal and practical effect State Rent Control instrumentalities, which the decree below, if sustained, will overrule and set aside and with the same result to the general welfare as though the Court had set aside a Rent Control ruling of the O.P.A., and thus the economic effect of the decree is inconsistent with the purpose of other Federal legislation to curb the private appropriation of rent. It is shown in the petition (p. 15), and not questioned by respondent, that land is the one thing which taxation increases, and that the taxes respondent is required by law to lay "can not increase living costs, but on the contrary stimulate production".

Respondent has cited no opinion by this Court which raises any doubt concerning the dominant power of the State government to control and regulate the private occupancy and to tax the value of land in the exercise of the State's borrowing power, and long established principles of constitutional law are not reversed by implication.

Can it be assumed that Congress, without discussion of the question, intended by a simple statute to effect a new and fundamental transfer of power to it, of so tremendous significance? If the broad construction urged by respondent is permitted, it would vest in Congress an undoubted power to regulate and control all revenues of a State or its local governments, and nullify the doctrine of reciprocal immunity, because where the power exists it can be exerted to destroy, as

it has been used in other republics, in recent years, under pressure by the same economic interests which will reap where they have not sown, if the decree below is not reversed.

The force and effect of feudal privileges has been clarified by the six year war which mankind has waged since the opinion in the *Bekins* case was announced, and in view of the vortex into which mankind now finds itself, the following comment by Jeremiah Sullivan Black, in his time the leader of the American Bar, is respectfully submitted:

> "* * * it is precisely in a time of war and civil commotion that we should double the guards on the Constitution * * * in peaceable and quiet times, our legal rights are in little danger of being overborne; but when the wave of arbitrary power lashes itself into violence and rage, and goes surging up against the barriers which were made to confine it, then we need the whole strength of an unbroken Constitution to save us from destruction."

The issue seems clear, "obsta principiis", "resist the beginnings".

CONCLUSION.

It is submitted that the petition should be granted, the decree of the Court below reversed, and the proceedings directed to be dismissed.

Dated, San Francisco, California,
September 14, 1945.

J. R. MASON,
Petitioner in Propria Persona.